

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Citizens
Telecommunications Company of California Inc.
d/b/a Frontier Communications of California
(U1024C), SureWest Telephone (U1015C), and
Verizon California Inc. (U1002C) to Exempt
Uniform Regulatory Framework ILECs From
General Order 77-M.

Application 11-02-003
(Filed February 2, 2011)

**DECISION GRANTING COMPENSATION TO
THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO
DECISION 12-11-017**

Claimant: The Utility Reform Network (TURN)	For contribution to Decision (D.) 12-11-017
Claimed (\$): \$24,349.40	Awarded (\$): \$21,260.65 (reduced 12.7 %)
Assigned Commissioner: Catherine J.K. Sandoval	Assigned ALJ: Kelly A. Hymes

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: In the final decision in this proceeding the Commission denied a request by Frontier Communications, SureWest Telephone and Verizon California for an exemption of Uniform Regulatory Framework (URF) carriers from the reporting requirements embodied in GO 77-M.

B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	April 19, 2011	Correct
2. Other Specified Date for NOI:		

3. Date NOI Filed:	May 19, 2011	Correct
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on Administrative Law Judge (ALJ) ruling issued in proceeding number:	Application (A.) 09-09-013 (verified in D.10-05-012)	Correct
6. Date of ALJ ruling:	January 7, 2010 (verified in D.10-05-012)	Correct
7. Based on another CPUC determination (specify):		
8. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.11-02-003	Correct
10. Date of ALJ ruling:	June 10, 2011	Correct
11. Based on another CPUC determination (specify):		
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.12-11-017	Correct
14. Date of Issuance of Final Order or Decision:	November 14, 2012	Correct
15. File date of compensation request:	January 14, 2013	Correct
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. In the fields below, describe in a concise manner Claimant’s contribution to the final decision:

Contribution	Specific References to Claimant’s Presentations and to Decision	Showing Accepted by CPUC
1. The Joint Assigned Commissioner and Administrative Law Judge Ruling	Joint Assigned Commissioner and	Yes

<p>and Scoping Memo of April 29, 2011 asked parties to comment on a single threshold issue relating to what impact, if any, would a competition proceeding have on the instant case.</p> <p>TURN urged the Commission to delay the instant proceeding if the Commission did in fact proceed with a competition investigation. TURN argued that it is feasible that a competition analysis could result in significant changes in the URF. The Commission agreed with TURN and issued a ruling holding the proceeding in abeyance. The ruling agreed with TURN that “there is a potential for change” and that the Commission cannot presume the outcome of a competitive analysis. Thus the briefing schedule was suspended until further notice. (Prior to that ruling TURN began drafting the opening brief but stopped that effort once the schedule was put on hold). On May 5, 2012 the assigned Commissioner issued a ruling reopening the proceeding since the Commission had yet to issue an Order Instituting Rulemaking (OIR) on competition.</p>	<p>Administrative Law Judge’s Ruling and Scoping Memo (April 29, 2011), at 4-5.</p> <p>Comments of the Greenlining Institute and TURN on Scoping Memo (June 1, 2011), at 2.</p> <p>Assigned Commissioner’s Ruling Holding Proceeding in Abeyance (September 15, 2011), esp. at 5.</p>	
<p>2. Historical purpose and intent of GO 77-M.</p> <p>The Commission asked parties to discuss the historical purpose and intent of GO 77-M. TURN presented Commission case law to support the argument that while the “primary” purpose of GO 77-M was related to ratesetting, the Commission has never held that it is the only or sole purpose. TURN argued that the information required by GO 77-M could be used to assess whether costs and salaries of utility officers and employees are</p>	<p>Joint Assigned Commissioner and ALJ’s Ruling and Scoping Memo (April 29, 2011), at 3.</p> <p>Opening Brief of TURN and the Greenlining Institute (May 23, 2012), at 2.</p>	<p>Yes</p>

<p>comparable to others in the industry as well as to assess whether a company is engaging in cross-subsidization.</p> <p>Finally TURN argued that prior Commission decisions exempting certain entities from GO 77-M were not applicable in the instant case.</p> <p>The Commission agreed with TURN stating that the information in GO 77-M can be used to ensure rates are just and reasonable. The Commission also agreed with TURN that prior examples of exemptions from GO 77-M were not applicable here.</p>	<p>Reply Brief of TURN and the Greenlining Institute (June 6, 2012), at 2.</p> <p>D.12-11-017, at 7-9; 20, FOF 1-4.</p>	
<p>3. Relationship of GO 77-M and rate deregulation.</p> <p>Parties were asked whether GO 77-M is still necessary given the elimination of basic rate cap.</p> <p>TURN argued that although the Commission has essentially deregulated basic rates, the Commission still had a statutory responsibility to ensure that such rates were just and reasonable. TURN further argued that, in spite of this rate freedom, the Commission can require the URF carriers to submit information such as that required by GO 77-M.</p> <p>In D.12-11-017, the Commission agreed with TURN holding that “despite the elimination of the basic rate caps, continued compliance with GO 77-M is necessary because the Commission’s continued duty, pursuant to the Public Utilities Code, to ensure just and reasonable rates.”</p>	<p>Joint Assigned Commissioner and Administrative Law Judge’s Ruling and Scoping Memo (April 29, 2011), at 3.</p> <p>Opening Brief of TURN and the Greenlining Institute (May 23, 2012), at 3-4.</p> <p>Reply Brief of TURN and the Greenlining Institute (June 6, 2012), at 4-5.</p> <p>D.12-11-017, at 10, 11, FOF 4-7.</p>	<p>Yes</p>
<p>4. Cross-subsidization.</p>		<p>Yes</p>

<p>Another issue raised by the Commission in the Scoping Memo was whether the GO 77-M was necessary to prevent cross-subsidization.</p> <p>TURN argued that the Digital Infrastructure and Video Competition Act (DIVCA) requires the Commission to ensure that basic service ratepayers are not cross-subsidizing the deployment of networks that provide video service. TURN further argued that a specific purpose of GO 77-M is to monitor cross-subsidization and that there was no compelling case for the Commission to eliminate GO 77-M reporting for URF carriers. TURN also argued that given the lifting of the rate freeze on basic service rates, which acted as a safeguard against, cross-subsidization, the Commission should not eliminate an important tool for assessing the existence of cross-subsidization. Finally, in response to arguments by the carriers, TURN asserted that it was irrelevant that the DIVCA decision (D.07-03-014) did not specifically list GO 77-M as one the safeguards to prevent cross-subsidization.</p> <p>The Commission agreed with TURN concluding “as we have previously found that the monitoring of cross-subsidization is one of the intents of GO 77-M, we find that there is a necessity for continued reliance on GO 77-M to monitor for cross-subsidization as it relates to basic residential video services.” The Commission also agreed with TURN that although D.07-03-014 did not list GO 77-M as a safeguard to prevent cross-subsidization, there was nothing in that decision saying GO 77-M is not a safeguard.</p>	<p>Joint Assigned Commissioner and Administrative Law Judge’s Ruling and Scoping Memo (April 29, 2011), at 3.</p> <p>Opening Brief of TURN and the Greenlining Institute (May 23, 2012), at 6-7.</p> <p>Reply Brief of TURN and the Greenlining Institute (June 6, 2012), at 7-8.</p> <p>D.12-11-017, at 10, 11, FOF 13-14, FOF 10.</p>	
--	---	--

<p>5. Relationship of GO 77-M and Public Purpose Programs.</p> <p>Parties were asked whether continued compliance with GO-77-M is necessary since the URF carriers receive subsidies from the LifeLine and the California High Cost Fund-B (CHCF-B) programs.</p> <p>TURN argued that the URF carriers have an obligation as Carriers of Last Resort (COLR) to provide affordable LifeLine service and service in high cost areas. To meet this obligation, the URF carriers have the opportunity to have some of their costs subsidized by ratepayers.</p> <p>Furthermore, TURN argued that the Commission has a responsibility, both to the consumers who receive subsidized services as well as to the customers who pay surcharges to support these programs, to ensure that the rates for basic service are affordable. To meet this responsibility, the Commission must monitor basic service rates. GO 77-M provides one way for the Commission to assess that rates are affordable. TURN concluded that the Commission could and does regulate URF carriers differently from other entities and that this was justifiable.</p> <p>In D.12-11-017 the Commission agreed with these arguments holding that the URF carriers should be held to a different level of regulation given that they have a COLR obligation and receive subsidies from the Public Purpose Programs. Thus the Commission found that continued compliance with GO 77-M is necessary.</p>	<p>Joint Assigned Commissioner and Administrative Law Judge's Ruling and Scoping Memo (April 29, 2011), at 3.</p> <p>Opening Brief of TURN and the Greenlining Institute (May 23, 2012), at 4-6.</p> <p>D.12-11-017, at 11-12, FOF 9.</p>	<p>Yes</p>
---	---	------------

<p>6. Relationship of GO 77-M and transparency.</p> <p>Parties were asked whether continued compliance with GO 77-M is necessary to promote transparency.</p> <p>TURN argued that the information required by GO 77-M could have usefulness beyond monitoring of rates and ratesetting, principally to provide more transparency into what advocacy organizations the URF carriers are funding to speak on their behalf. The Commission found that the arguments presented by any party regarding the issues of transparency not convincing.</p> <p>While TURN did not prevail on this issue we submit that our advocacy was an important voice in providing a response and perspective to the Commission's questions on this issue.</p>	<p>Joint Assigned Commissioner and Administrative Law Judge's Ruling and Scoping Memo (April 29, 2011), at 3.</p> <p>Opening Brief of TURN and the Greenlining Institute (May 23, 2012), at 7-10.</p> <p>D.12-11-017, at 14.</p>	<p>Yes</p>
<p>7. Relationship of GO 7-M and competitive neutrality.</p> <p>Parties were asked whether continued compliance with GO 7-M is consistent with the Commission's policy of competitive neutrality.</p> <p>TURN argued that the Commission must balance many public policy goals in achieving a regulatory framework that enhances competition but also safeguards consumer welfare. Contrary to the URF carriers' assertions, TURN argued that neither URF nor general Commission policy mandate that competitive neutrality and the elimination of asymmetric regulation are the only goals the Commission must meet.</p> <p>The Commission agreed with TURN's arguments finding that "the Commission has at times acted to</p>	<p>Joint Assigned Commissioner and Administrative Law Judge's Ruling and Scoping Memo (April 29, 2011), at 3.</p> <p>Opening Brief of TURN and the Greenlining Institute (May 23, 2012), at 10-11.</p> <p>Reply Brief of TURN and the Greenlining Institute (June 6, 2012), at 10-13.</p>	<p>Yes</p>

promote consumer protection despite its competitive neutrality policy.” The Decision noted with approval TURN’s example of asymmetric regulation of URF COLRs whereby these carriers must file annual basic service rates as part of the LifeLine program.	D.12-11-017, at 15, 17, FOF 11,12 and 15.	
<p>8. GO 77-M refinements.</p> <p>Parties were asked whether the current requirements of GO 77-M should be refined and what those refinements should be.</p> <p>TURN proposed specific refinements for GO 77-M. While the Commission did not adopt any refinements, the Decision agreed with TURN’s arguments that refinements were necessary. The Decision directs staff to develop an OIR to review GO 77-M.</p>	<p>Joint Assigned Commissioner and Administrative Law Judge’s Ruling and Scoping Memo (April 29, 2011), at 3.</p> <p>Opening Brief of TURN and the Greenlining Institute (May 23, 2012), at 12-13.</p> <p>D.12-11-017, at 19, FOF 16.</p>	Yes

B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?	Yes	Correct
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Correct
c. If so, provide name of other parties: Greenlining Institute		Correct

<p>d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</p> <p>TURN jointly developed and filed a protest with the Greenlining Institute. Our protest was supported by DRA. TURN continued to work closely with Greenlining in drafting and filing pleadings throughout the proceeding. In certain instances Greenlining was the lead in drafting a filing; in others TURN took lead. In this manner we minimized any duplication of effort. TURN also discussed its positions with DRA to ensure minimal duplication of effort with DRA.</p>	<p>Correct.</p> <p>However, we find that the information provided by TURN does not adequately show how it and Greenlining eliminated duplication of effort and we adjust accordingly as noted below.</p>
--	--

C. Additional Comments on Part II:

#	Claimant	CPUC	Comment
	Partial Contribution	We reduce TURN's claim for duplication as shown in Part III.B below.	<p>The Commission has interpreted the Section 1802 definition, in conjunction with Section 1801.3, so as to effectuate the legislature's intent to encourage effective and efficient intervenor participation. The statutory provision of "in whole or in part," as interpreted by multiple Commission decisions on intervenor compensation requests, has established as a general proposition that when a party makes a substantial contribution in a multi-issue proceeding, it is entitled to compensation for time and expenses even if it does not prevail on some of the issues. See, for example, D.98-04-028 (awarding TURN full compensation in CTC proceeding, even though TURN did not prevail on all issues); D.98-08-016, at 6, 12 (awarding TURN full compensation in SoCalGas PBR proceeding); D.00-02-008, at 4-7, 10 (awarding TURN full compensation even though we unsuccessfully opposed settlement).</p> <p>In this proceeding, TURN was highly successful, with the Commission adopting all of TURN's recommendations and arguments except one (transparency). TURN thus believes that our contributions warrant compensation for all of our time and expenses in this proceeding.</p>

PART III: REASONABLENESS OF REQUESTED COMPENSATION**A. General Claim of Reasonableness (§§ 1801 & 1806):**

a. Concise explanation as to how the cost of Claimant's participation bears a reasonable relationship with benefits realized through participation:	CPUC Verified
<p>As with many quasi-legislative proceedings, the precise benefits to consumers from TURN's participation in this docket are difficult to quantify. However, the issues at stake in this proceeding directly impact consumers in terms of the Commission's continued ability to ensure that rates for basic service and LifeLine are just and reasonable. The Commission's decision to require continued URF carrier compliance with GO 77-M is based, in large part, on the efforts of TURN.</p>	<p>We agree that the benefits to the ratepayers provided by TURN's participation are difficult to quantify. However, as determined by D.12-11-017, the continued use of GO 77-M as another tool for the Commission should assist the Commission in protecting ratepayers from excessive rates.</p>
<p>b. Reasonableness of Hours Claimed.</p> <p>The total hours included in this request represent about one and one-half 40-hour weeks of attorney time. In light of the importance and complexity of the policy issues addressed, the Commission should find TURN's request for intervenor compensation to be reasonable.</p>	<p>We find that TURN's hours and costs, as adjusted herein, are reasonable and warrant compensation. However, we find excesses in time spent researching issues and drafting/editing documents.</p>
<p>c. Allocation of Hours by Issue</p> <p>The following codes relate to specific substantive issue and activity areas addressed by TURN:</p> <p>GP - General Preparation: time for activities necessary to participate in the docket</p> <p>COIR – Impact of a possible competition OIR on consideration of an exemption to GO 77-M</p>	<p>We find the allocation of hours by issue to be reasonable.</p>

P – Historical purpose of GO 77-M R – Relationship of GO 77-M and rate deregulation C – Relationship of GO 77-M and cross-subsidization PPP – Relationship of GO 77-M and Public Purpose Programs T – Relationship of GO 77-M and transparency CN - Relationship of GO 77-M and competitive neutrality RF – Possible refinements to GO 77-M COMP - Preparation of compensation request and TURN's notice of intent. # - Where time entries cannot easily be identified with a specific activity code. For these entries, the allocation of time spent on activities can be broken down as such: P 20%, R 20%, C 25%, PPP 20%, T 5%, CN 10%	

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
William Nusbaum	2011	28.25	\$435	Res. ALJ 247	\$12,288.75	25.4 ⁽¹⁾	\$435 ⁽²⁾	\$11,049.00
William Nusbaum	2012	22.50	\$445	Res. ALJ 281 (See Comment 2)	\$10,012.50	20.3 ⁽¹⁾	\$445 ⁽²⁾	\$9,033.50
	Subtotal:				\$22,301.25	Subtotal:		\$20,082.50
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
William Nusbaum	2011	1	\$217.50	Res. ALJ 247 (@ 50% of normal rate)	\$217.50	1	\$217.50	\$217.50
William Nusbaum	2013	8	\$222.5	Res. ALJ 281 (see comment 2 @ 50% of proposed rate)	\$1,780.00	4 ⁽³⁾	\$227.50 ⁽⁴⁾	\$910
	Subtotal:				\$1,997.50	Subtotal:		\$1,127.50

COSTS					
#	Item	Detail	Amount		Amount
	Photocopies	Hard copies for Commissioner and ALJ	\$13.60		\$13.60
	Lexis	Computerized research	\$30.45		\$30.45
	Postage	TURN pleadings	\$6.60		\$6.60
Subtotal:			\$50.65	Subtotal:	\$50.65
TOTAL REQUEST \$:			\$24,349.40	TOTAL AWARD:	\$21,260.65
<p>*We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer's normal hourly rate</p>					
Attorney		Date Admitted to CA BAR ¹	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation	
William Nusbaum		June 7, 1983	108835	No; please note from January 1, 1997 until October 4, 2002 Mr. Nusbaum was an inactive member of the California Bar.	

C. TURN's Comments and Attachments on Part III:

Attachment or Comment #	Description/Comment
1	Certificate of Service
2	Contemporaneous Time Sheets for Attorney. A daily listing of the specific tasks performed by Mr. Nusbaum in connection with this proceeding is set forth in Attachment 2. TURN's staff maintained detailed contemporaneous time records indicating the number of hours devoted to work on this case. In preparing this appendix, Mr. Nusbaum reviewed all of the recorded hours devoted to this proceeding and included only those that were reasonable for the underlying task.
3	Expense Detail

¹ This information may be obtained at: <http://www.calbar.ca.gov>

4	Allocation of TURN Attorney and Consultant Hours by Issue/Activity Code: TURN has allocated all of our attorney and advocate time by issue area or activity, as evident on our attached timesheets.
Comment 1	TURN worked very closely with the Greenlining Institute in this proceeding. We maximized that relationship by taking different roles at various times so as to avoid duplication and to leverage our resources. Thus we jointly developed and filed a protest with TURN drafting materials on certain issues and Greenlining other issues. TURN continued to work closely with Greenlining in drafting and filing pleadings throughout the proceeding. In certain instances Greenling was the lead in drafting a filing; in others TURN took lead.
Comment 2	Hourly Rate for William Nusbaum in 2012 Consistent with the Cost-of-Living Adjustment authorized by Resolution ALJ-281, the hourly rate for William Nusbaum in 2012 is increased by 2.2%. Since this adjustment raises Mr. Nusbaum's rate to \$444.57, TURN rounds this to the nearest \$5 increment (\$445).
Comment 3	TURN used 50% of the authorized 2012 hourly rate as the billing rate for the compensation request, prepared by Mr. Nusbaum in 2012.

D. CPUC Disallowances & Adjustments:

#	Reason
1.	To address the concerns regarding duplication and excessive hours, we subtracted 10 percent of the hours worked to account for a) duplication that the Commission could not specifically delete, i.e., transparency and competitive neutrality issues and b) excessive hours for researching issues and drafting/editing the joint response. For 2010: $28.25 - 2.82 = 25.4$ hours For 2011: $22.50 - 2.25 = 20.3$ hours
2.	TURN requested a 2.2 percent increase for Mr. Nusbaum's approved rate of \$435 for 2011. The Commission approved a 2011 rate for Mr. Nusbaum of \$435 in D.13-03-024 and a 2012 rate of \$445. We continue the use of those rates here.
3.	We decrease by 50 percent the number of hours for performing work on the claim. The revised amount of time is commensurate with other intervenors in this proceeding.
4.	Abiding by Resolution ALJ-287 2013 hourly rates are automatically raised to reflect the 2.0% Cost-of-Living Adjustment adopted by the resolution. In this instance, Mr. Nusbaum's 2013 hourly rate would be set at \$455 per hour. Since the work Mr. Nusbaum completed in 2013 involved Intervenor Compensation Claim preparation, the half-time hourly rate is set at \$227.50.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	No
B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c)(6))?	Yes

FINDINGS OF FACT

1. The Utility Reform Network (TURN) has made a substantial contribution to Decision 12-11-017.
2. The requested hourly rates for TURN's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable contribution is \$21,260.65.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. The Utility Reform Network is awarded \$21,260.65.
2. Within 30 days of the effective date of this decision, Citizens Telecommunications Company of California, Inc. d/b/a Frontier Communications of California, SureWest Telephone, and Verizon California shall pay The Utility Reform Network their respective shares of the award, based on their California-jurisdictional telecommunications revenues for the 2012 calendar year, to reflect the year in which the proceeding was primarily litigated. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning March 30, 2013, the 75th day after the filing of The Utility Reform Network's request, and continuing until full payment is made.

3. The comment period for today's decision is waived.

4. This decision is effective today.

Dated _____, at Redding, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution to Decision:	D1211017	
Proceeding:	A1102003	
Author:	ALJ Kelly A. Hymes	
Payee:	Citizens Telecommunications Company of California, Inc., SureWest Telephone, and Verizon California Inc.	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network (TURN)	January 14, 2013	\$24,349.40	\$21,260.65	No	Adjusted for duplication and excessive hours.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
William	Nusbaum	Attorney	TURN	\$435	2011	\$435
William	Nusbaum	Attorney	TURN	\$445	2012	\$445
William	Nusbaum	Attorney	TURN	\$445	2013	\$455/\$227.50

(END OF APPENDIX)